Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than 60 days from publication.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8584 Filed 4–8–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James E. Harris, P.A.; Revocation of Registration

On November 19, 2002, the Deputy Assistant Administrator, office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Harris, P.A. (Mr. Harris) of Henderson, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, MH0604846, as a physician's assistant under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of that registration, pursuant to 21 U.S.C. 823(f) for reason that Mr. Harris is not authorized to handle controlled substances in the State of Nevada. The order also notified Mr. Harris that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Mr. Harris at a residential location in Henderson, Nevada and DEA received a signed receipt indicating that it was received on December 5, 2002. DEA has not received a request for hearing or any other reply from Mr. Harris or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Harris is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator new enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on March 13, 2002, the Nevada State Board of Medical Examiners (the Board) issued Findings of Fact, Conclusions of Law and Order in response to a complaint filed against the physician assistant license of Mr. Harris. The Board found *inter alia,* that Mr. Harris while working as a physician assistant at his place of work was tested, with a positive result for controlled substances. The Board also found that Mr. Harris' use of controlled substances impaired his ability to practice medicine and endangered the health, safety and welfare of his patients. As a result of its findings, the Board ordered the revocation of Mr. Harris' physician assistant license to practice medicine in the State of Nevada.

There is no evidence in this investigative file that the Board's revocation order has been stayed or lifted, nor is there evidence that Mr. Harris' physician assistant license to practice medicine in the State of Nevada has been reinstated. Therefore, the Deputy Administrator finds that since Mr. Harris is not currently authorized to practice medicine in Nevada, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Mr. Harris is not licensed to handle controlled substances in Nevada, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, MH0604846, issued to James E. Harris, P.A., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective May 9, 2003.

Dated: March 26, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–8589 Filed 4–8–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–27]

Island Wholesale, Inc., Denial of Application

On October 5, 2001, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Island Wholesale, Incorporated (Respondent), proposing to deny its application, executed on March 31, 2000, for DEA Certificate of Registration as a distributor of the list I chemicals ephedrine and pseudoephedrine. The Order to Show Cause alleged that granting the Respondent's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h).

The Order to Show Cause was delivered to the Respondent by certified mail, and the Respondent timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Gail A. Randall (Judge Randall), and the Government submitted its Prehearing Statement, the Respondent, through its legal counsel, withdrew its opposition to the denial of its DEA application for registration. In response to the Respondent's request, Judge Randall also found that the Respondent had likewise withdrawn its request for hearing. Accordingly, on April 18, 2002, Judge Randall issued a Termination Order terminating all matters before her and the matter was subsequently transmitted to the Deputy Administrator for Final Agency Decision.

In light of the withdrawal of its request for hearing, the Deputy Administrator finds that the Respondent has waived its hearing right. Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Deputy Administrator's review of the investigative file reveals that the Respondent is a small candy distributor located in Brooklyn, New York. The Respondent is owned by Fouad Twaiti, and his brother, Ali Twaiti serves as its manager. As part of a pre-registration investigation, DEA Division Investigators met with Fouad and Ali Twaiti on May 12, 2000. Fouad Twaiti informed investigators that his firm had been in operation since early 2000, and further added that his firm had been approached by some of its customers who ask for list I chemical products. Upon request, Fouad Twaiti furnished DEA investigators with a customer list consisting of four business establishments.

DEA investigators subsequently interviewed each of the owners and/or managers comprising the customer list provided by Fouad Twaiti. Each of the listed establishments denied requesting list I chemical products from Fouad Twaiti, and three of the establishments denied engaging in the sale of any pseudoephedrine products.

The investigative file further reveals that as part of its ongoing investigation of the Respondent, DEA investigators obtained bank records of an individual hereinafter referred to as ''M.A.'' In or around March 2000, M.A. was criminally charged in Newark, New Jersey, with unlawful distribution of a listed chemical, and in January 2001, M.A. purportedly signed a plea agreement on the charge. According to DEA's review of bank records, Ali Twaiti engaged in a transaction with MA for $54,000 on December 20, 1999. When M.A. was asked by law enforcement officials about the above transaction with Ali Twaiti, M.A. replied, ''that was for a candy deal.''

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

The Deputy Administrator finds factors one, four, and five relevant to the Respondent's pending application.

With respect to factor one, maintenance of effective controls against diversion, the Deputy Administrator finds evidence in the investigative file that the Respondent provided customer information to DEA investigators that later proved to be false. With the ever-present problem of listed chemical diversion, it is incumbent upon a potential registrant to provide reliable and accurate information regarding the immediate destination of these products, and thereby, reduce the opportunity for diversion. The Deputy Administrator finds the uncertainty surrounding Respondent's customers is relevant under factor one and supports denial of Respondent's pending application for DEA registration.

Regarding factor four, past experience in the manufacture and distribution of chemicals, the Deputy Administrator can find no evidence in the investigative file that Respondent, a small candy distributor, has any previous experience related to handling or distributing listed chemicals. This factor also weighs against the granting of Respondent's pending application. *See,* CHM Wholesale Co., 67 FR 9985 (2002).

With respect to factor five, such other factors relevant to and consistent with the public safety, the Deputy Administrator finds relevant that Respondent provided false information to DEA investigators when it provided a list of its purported customers. The Deputy Administrator finds this lack of candor makes questionable the Respondent and its owners' commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of listed chemicals. Seaside Pharmaceutical Co., 67 FR 12580 (2002); Aseel, Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, M.D., 61 FR 2841 (1996).

On a related note, it is also unclear whether Fouad Twaiti provided a false statement to DEA investigators when he stated that the firm had been approached by customers requesting listed chemical products. Even if the statement regarding customer inquiries was true, there is insufficient information before the Deputy Administrator regarding the type of customers that requested these products, their identity and location, and whether they had a legitimate business interest in seeking the purchase of listed chemical products.

The Deputy Administrator also finds relevant under factor five, the fact that Ali Twaiti engaged in a significant financial transaction with a purported diverter of list I chemicals. The apparent business connection between Respondent's ownership and an individual purportedly convicted of unlawful distribution of list I chemicals is troubling when one considers that the Respondent seeks a DEA Certificate of Registration to distribute these same products.

The Deputy Administrator concludes that the Respondent cannot be entrusted with the responsibilities of a DEA registration. In light of the above, the Deputy Administrator further concludes that it would be inconsistent with the public interest to grant the application of the Respondent.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Island Wholesale, Incorporated be, and it hereby is, denied. This order is effective May 9, 2003.

Dated: March 26, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–8591 Filed 4–8–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Correction—Penick Corp.

On March 13, 2003, a Notice of Registration was published in the **Federal Register** (68 FR 12104) for Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, which was wrongly entitled Importer of Controlled Substances. The Notice